IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 2579 OF 1996.

I.G.Petrochemicals Ltd.,
a pubic limited company
incorporated under the
provisions of the Companies
Act, 1956 having its registered
office at T-2, Shabana Chambers,
Panaji, and also carrying on
business at 401/404, Raheja
Centre, Free Press Journal
Marg, 214, Nariman Point,
Mumbai 400 021. ... Plaintiffs.

Versus.

C.M.M.Limited, a company
incorporated under the provisions
of the Companies Act, 1956 and
having its Registered office at
Post Bag No.6308, 4th floor, Paragon
Condominium, P.B.Marg, Worli,
Mumbai 400 108. ... Defendants.

Ms.H.H.Daulat i/by M/s.Khaitan & Jaykar for the Plaintiffs.

None for the Defendants.

CORAM : ABHAY S.OKA, J.

DATED : 23rd October, 2007.

ORAL JUDGMENT.:

1. This is a suit for recovery of a sum of Rs.3,19,90,411/- together with interest at the rate of 27% per annum from the date of filing of the suit on the sum of Rs.2.50 crores. In a Summons for Judgment taken out by the Plaintiffs on 15th October 1997, this Court granted unconditional leave in favour of the Defendants to defend the suit. However, Written Statement was not

filed by the Defendants. By order dated 4th November 2003 passed by this Court in Notice of Motion No.2179 of 2001, this Court directed that the suit should be placed on the cause list for passing a decree under Rule 10 of Order VIII of the Code of Civil Procedure, 1908.

2. According to the case of the Plaintiffs a sum of Rs.2.50 crores was advanced by them to the Defendants as a short term intercorporate deposit. The said amount was paid by the Plaintiffs by two cheques dated 19th June 1995 in the sum of Rs.2.20 crores and Rs.30 lakhs respectively. The said short term incorporate deposit was for a period of six months and the same carried interest at the rate of 27% per annum. The terms and conditions on which the said amount was paid by the Plaintiffs to the Defendants were incorporated in the Plaintiffs' letter dated 19th June 1995 addressed to the Defendants. The aforesaid two cheques were forwarded to the Defendants along with the said letter.

3. Though the term of the intercorporate deposit expired on 18th December 1995, the same was not repaid by the Defendants inspite of several reminders sent by the Plaintiffs. Therefore, an Advocate's notice dated 6th April 1996 was issued by the Plaintiffs to the Defendants calling upon the Defendants to repay the amount with interest at the agreed rate.

4. By reply dated 8th April 1996 the Defendants did not deny the liability. However, the Defendants came out with a case that the deposit was a long term arrangement. It was pointed out that another concern by name M/s.Chetan Corporation was to pay the balance amount to the Defendants which was not paid. Thereafter there was a further correspondence made between the parties. As the Defendants declined to pay the amount, the present suit has been filed.

5. The Plaintiffs have filed affidavit of Shri Jitendra K.Saboo, the Executive Director of the Plaintiffs. Along with the said affidavit certain documents have been produced by the Plaintiffs. The Plaintiffs have produced a copy of the letter dated 19th June 1995 sent by them to the Defendants along with which two cheques dated 19th June 1995 for the amount of Rs.2.20 crores and Rs.30 lakhs were forwarded to the Defendants. In the said letter it is specifically stated that the short term intercorporate deposit was payable after six months and/or thereafter at call with seven days notice. The rate of interest of 27% per annum was also mentioned in the said letter. The Plaintiffs have produced office copy of the Advocate’s letter dated 6th April 1996 in which the plaintiffs have reiterated the terms and conditions on which the deposit

was made. A copy of the reply dated 8th April 1996 sent by the Defendants to the Advocate's letter is also placed on record. The Defendants did not dispute the receipt of the sum of Rs.2.50 crores from the Plaintiffs. However, the Defendants contended that (a) deal was for a total amount of Rs.6 crores; (b) it was a long term arrangement to last over 18 to 30 months; (c) certain amount was to be paid by M/s.Chetan Corporation to the Defendants; (d) repayment was to be made out of a public issue proceeds; (e) Plaintiffs had an option to convert the outstanding amount into the equity shares at the market price; and (f) The Chetan Group was to reciprocate by financing the business concern of one Mr.Ashok Rupani.

6. In the said letter the Defendants requested that the notice should be withdrawn and the matter should be settled amicably. To another letter dated 23rd April 1996 sent by the Advocate for the Plaintiffs, the Defendants responded by letter dated 3rd may 1996. In the said letter which is produced on record, the Defendants reiterated what was stated in their earlier letter and stated that the amount of intercorporate deposit taken from the Plaintiffs would be repaid as per the earlier understanding.

7. The terms and conditions on which the amount was

paid by the Plaintiffs have been incorporated in letter dated 19th June 1995 sent by the Plaintiffs to the Defendants. In fact the cheques were forwarded along with the said letter. The said letter clearly records that the amount was repayable after six months and/or thereafter at call with seven days notice. The letter incorporates the rate of interest of 27% per annum. The letters of the Defendants which are referred to above show that the Defendants have not disputed the agreed rate of interest and they have also not disputed the receipt of the amount of Rs.2.50 crores. The Defendants have set up an oral arrangement between the parties and the contention of the Defendants is that they are willing to pay the amount as per the said oral understanding. The burden to prove the said oral understanding or oral arrangement was on the Defendants. Though unconditional leave was granted, the Defendants have not chosen to defend the suit by filing written statement. Claim in the suit is otherwise proved by the aforesaid affidavit of Shri Jitendra K.Saboo.

8. Thus the Plaintiffs have established their claim for recovery of the sum of Rs.2.50 crores with interest thereon at the rate of 27% per annum from the date of institution of the suit. The Plaintiffs have prayed for further interest at the rate of 27% per annum. Considering the facts and circumstances of the case

further interest will have to be awarded at the rate of 15% per annum.

9. Hence the suit is decreed as prayed with modification that further interest payable on the principal amount of Rs.2.50 crores will be at the rate of 15% per annum from the date of institution of the suit till realisation or payment.

10. The Plaintiffs will be entitled to refund of Court fees, if any, as per the rules.

11. Certified copy is expedited.

Judge.